

Ordinance No. 7-09

ORDINANCE:

To amend Chapter 13.5 of the Rockville City Code entitled “Moderately Priced Housing” so as to conform its provisions with the new Zoning Ordinance adopted by Ordinance No. 19-08

BE IT ORDAINED BY THE Mayor and Council of Rockville, MARYLAND, that Chapter 13.5 of the Rockville City Code entitled “Moderately Priced Housing” be amended to read as follows:

### **Chapter 13.5 MODERATELY PRICED HOUSING**

\* \* \*

#### **Sec. 13.5-3. Definitions.**

The following words and phrases, as used in this chapter, have the following meanings:

*Applicant* means any person, firm partnership, association, joint venture, corporation, or any other entity for combination of entities, and any transferee of all or part of the land at one (1) location, who after this chapter takes effect:

- (1) Submits for approval or extension of approval a preliminary plan of subdivision under Chapter 25 which plan provides for the development of a total of fifty (50) or more dwelling units at one (1) location in one (1) or more subdivisions, parts of subdivisions, resubdivisions, or stages of development, regardless of whether any part of the land has been transferred to another party or;
- (2) Submits to the City a plan of housing development for any type of [use permit review] site plan approval or other development approval required by law, which plan includes construction or development of fifty (50) or more dwelling units at one (1) location; or
- (3) With respect to all land not subject to subdivision approval or [use permit review] site plan approval, applies for a building permit or permits under Chapter 5, which permit is or permits are for the construction of a total of fifty (50) or more dwelling units at one (1) location.

In determining whether a development contains a total of fifty (50) or more dwelling units for the purpose of applying this chapter, all land at one (1) location within the City available for building development under common ownership or control by an applicant, including land owned or controlled by separate corporations in which any stockholder or family of the stockholder owns ten (10) percent or more of the stock, must

be included. An applicant shall not avoid this chapter by submitting piecemeal applications or approval requests for subdivision plats, [use permits] site plan approval, development approvals or building permits. Any applicant may submit a preliminary plan of subdivision for approval, [use permit] site plan [or development plans] for approval, recorded plat or request for building permit for less than fifty (50) dwelling units at any time, but the applicant must agree in writing that upon the next such application or request, the applicant will comply with this chapter when the total number of dwelling units at one (1) location has reached fifty (50) or more. All applicants, with respect to land to which this chapter applies, have local official approval to participate in the federal rent supplement program.

At one (1) location means all adjacent land of the applicant if:

- (1) The property lines are contiguous or nearly contiguous at any point, or
- (2) The property lines are separated only by a public or private street, road, highway or utility right-of-way or other public or private right-of-way at any point, or
- (3) The property lines are separated only by other land of the applicant which is not subject to this chapter at the time of any permit, development or subdivision application by the applicant.

\* \* \*

*Optional density bonus provision* means any increase in the number of dwelling units permitted by Chapter 25 (Zoning Ordinance), section 25.11.04.b in a [zoning classification that allows residential development, above the amount of dwelling unit permitted in the base zone or standard method of development, whether by exercise of section 25-328 of Chapter 25 or pursuant to a special development procedure] Residential Medium Density Zone.

\* \* \*

#### **Sec. 13.5-5. Requirement.**

- (a) Any applicant, in order to obtain a building permit must submit to the Division of [Licenses and] Inspection Services, with the application of a permit, a written MPDU agreement approved by the Mayor and Council and by the City Attorney that provides the required number of moderately priced dwelling units.
- (b) Except as provided herein, the required number of MPDU's shall equal twelve and one-half (12.5) percent of the total units in the development.
- (c) When the development at one (1) location is in any zone which provides for an MPDU density bonus and (1) is covered by a plan of subdivision, or (2) is

covered by a [special development procedure or a use permit] site plan approval, or (3) requires a building permit to be issued for construction, the required number of moderately priced dwelling units is a variable percentage that is not less than twelve and one-half (12.5) percent of the total number of dwelling units at that location. Except as specified in subsections (c) and (d), the required number of MPDU's shall vary according to the amount by which the approved development exceeds the normal or standard density for the zone in which it is located. Chapter 25 permits bonus densities in certain zones over the presumed base density where MPDU's are provided. If the use of the optional MPDU development standards does not result in an increase over the base density, the City Manager shall conclude that the base density could not be achieved under conventional development standards, in which case the required number of MPDU's shall not be less than twelve and one-half (12.5) percent of the total number of units in the subdivision. The amount of density bonus achieved in the approved development determines the percentage of total unit that must be MPDU's as follows:

TABLE INSET:

Achieved Density Bonus	MPDU's Required
Zero	12.5%
Up to 1%	12.6%
Up to 2%	12.7%
Up to 3%	12.8%
Up to 4%	12.9%
Up to 5%	13.0%
Up to 6%	13.1%
Up to 7%	13.2%
Up to 8%	13.3%
Up to 9%	13.4%
Up to 10%	13.5%
Up to 11%	13.6%
Up to 12%	13.7%
Up to 13%	13.8%
Up to 14%	13.9%
Up to 15%	14.0%
Up to 16%	14.1%

Up to 17%	14.2%
Up to 18%	14.3%
Up to 19%	14.4%
Up to 20%	14.5%
Up to 22%	15.0%

(d) In [p]Planned [d]Development [z]Zones, [(Planned Residential Unit, Residential Townhouse and Comprehensive Planned Development)] the number of MPDU's shall not be less than either the number of density bonus units or twelve and one-half (12.5) percent of the total number of units, whichever is greater. In addition, in approving [an exploratory application for a Planned Residential Unit (PRU) for] the redevelopment of an existing public housing project, the Mayor and Council may authorize up to the same number of units that existed in the public housing project before redevelopment.

(e) In [Town Center and Rockville Pike Corridor (RPC) the Mixed-Use Transit District (MXTD) and the Mixed-Use Corridor District (MXCD) zones, at least fifteen (15) percent of the total number of dwelling units must be MPDU's.

(f) \* \* \*

(g) \* \* \*

(h) \* \* \*

(i) \* \* \*

(j) \* \* \*

(k) \* \* \*

(l) \* \* \*

(m) \* \* \*

#### **Sec. 13.5-6. Zoning provisions; waiver of requirements.**

(a) *Zoning provisions.* The Mayor and Council, to assist in providing moderately priced housing has enacted zoning standards in Chapter 25, establishing procedures and standards which may increase the allowable number of residential dwelling units. If the applicant elects the optional density provisions, permitting the construction of an increased number of dwelling units, the requisite percentage and number of MPDU's shall apply to the total number of dwelling units as increased by application of the optional density provisions that increases the density above the otherwise permitted density of the zoning classification in which the property is situated.

- (b) *Waiver of requirements.* Any applicant who presents sufficient evidence to the Mayor and Council in applying for a building permit, or in submitting a preliminary plan of subdivision for approval or requesting [use permit] site plan or project plan approval, may be granted a waiver from part or all of section 13.5-5. The waiver must be related only to the number of MPDU's to be built and may be granted only if the Mayor and Council, after consulting with the Department, finds that the applicant cannot attain the full density of the zone, because of any requirements of the zoning ordinance or the administration of other laws or regulations. When any part of the land that dwelling units cannot be built on for physical reasons is used to compute permitted density, the applicant's inability to use the optional density bonus provisions is not in itself grounds for waiving the MPDU requirements. Any waiver must be strictly construed and limited.

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#### **Sec. 13.5-8. Sale or rental of moderately priced dwelling units.**

- (a) *Sale or rental to general public.*

(1) \* \* \*

(2) \* \* \*

(3) \* \* \*

(4) \* \* \*

(5) Moderately priced dwelling units, except those built, sold, or rented under another Federal, State or local program, may not be offered for rent by an applicant during the ninety (90) day priority marketing period, except in proportion to the market rate rental units in that subdivision as follows:

a. In a subdivision containing only [single-family] single unit dwellings, the proportion of rental MPDU's must not exceed the proportion of market rate rental units to all market rate units.

b. In a subdivision containing both [single-family] single unit dwellings and [multiple-family] multiple-unit dwellings, the proportion of rental [single-family] single unit dwelling MPDU's to all [one-family] single unit dwelling MPDU's must not exceed the proportion of market rate rental [single-family units] single unit dwellings to all market rate [single-family units] single unit dwellings; and the proportion or rental [multiple-family] multiple-unit dwellings MPDU's must not exceed the proportion of market

rate rental [multiple-family units] multiple-unit dwellings to all market rate [multiple-family units] multiple-unit dwellings.

c. Applicants shall make a good faith effort to enter into contracts with eligible persons during the priority marketing period and for an additional period necessary to negotiate with eligible persons who indicate a desire to buy or rent an MPDU during that period.

(b) \* \* \*

#### **Sec. 13.5-10. Waiver of fees.**

(a) *Qualifications.* If a person, firm, partnership, association, joint venture, corporation, or other entity or combination of entities, or transferee of all or part of the land at one (1) location:

(1) \* \* \*

(2) Submits to the City a plan of housing development for any type of [use permit] site plan review or other development approval required by law, which plan includes construction or development of less than fifty (50) dwelling units at one (1) location; or

(3) With respect to all land not subject to subdivision approval or [use permit] site plan review, applies for a building permit or permits under Chapter 5, which permit is or permits are for the construction of a total of less than fifty (50) dwelling units at one location.

Such person, firm, partnership, association, joint venture, corporation, or other entity or combination of entities, or transferee may apply for a waiver of all or some of the development fees, described in subsection (b) if MPDU's are included in the project.

(b) *Fees.* Fees which may be waived are:

- (1) Building application and permit fee;
- (2) Stormwater management fee and contributions;
- (3) [Use permit] Site plan review application fee;
- (4) Public Works application and permit fees.

#### **Sec. 13.5-11. Regulations; enforcement.**

(a) The Department shall maintain a list of all moderately priced dwelling units constructed, sold or rented under this chapter, and the City Manager may, from time to time, adopt regulations necessary to administer this chapter.

(b) This chapter applies to all agents, successors and assigns of an applicant. A building permit shall not be issued, and a preliminary plan of subdivision, development plan, or [use permit] site plan shall not be approved unless it meets the requirements of this chapter. The City Manager may deny, suspend or revoke any building or occupancy permit upon finding a violation of this chapter. Any prior approval of a preliminary plan of a subdivision, development plan or [use permit] site plan approval or other previous development approval may be suspended or revoked upon the failure to meet any requirement of this chapter. An occupancy permit shall not be issued for any building to an application, or a successor or assign of any applicant, for any construction which does not comply with this chapter.

(c) Any violation of this chapter or regulations adopted under it is a misdemeanor.

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### **Sec. 13.5-13. Applicability.**

This chapter applies to all applicants and units developed by applicants, except when:

- (1) A building permit has been issued prior to [the effective date of this chapter] September 10, 1990; or
- (2) A special exception for housing for [elderly or handicapped persons] senior adults and persons with disabilities has been approved by the Board of Appeals; or
- (3) A preliminary subdivision plan[, or use permit, or detailed special development application] or other development plan or proposal has been approved by the Planning Commission prior to [the adoption of this chapter] September 10, 1990;
- (4) [Any] A development in a Planned Development Zone [exploratory application or concept plan application] has been approved by the Mayor and Council or the Planning Commission under the Special Development Procedures Article] applicable provisions of the Zoning Ordinance prior to [the adoption of this chapter] September 10, 1990.

NOTE: [Brackets] indicate material deleted  
Underlining indicates material added

Asterisks \* \* \* indicate material unchanged by this ordinance.

\* \* \* \* \*

I hereby certify that the foregoing is a true and correct copy of an ordinance adopted by the Mayor and Council at its meeting of March 9, 2009.

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Claire F. Funkhouser, CMC, City Clerk